

REMARKS

Claims 1-9 are currently pending, with claim 1 being the only independent claim. Reconsideration of the above-identified application is respectfully requested.

Claims 1, 2, 4, 6 and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pub. No. 2002/01529996 ("*Gabauer*"). Claims 1, 3 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over EP 0922603 ("*Flambert*") in view of *Gabauer*. Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Flambert* in view of *Gabauer*, and further in view of U.S. Patent No. 6,606,980 ("*Walter*"). Lastly, claims 8 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Gabauer*. Reconsideration and withdrawal of these rejections are respectfully requested.

Independent claim 1 was previously amended to recite "a volumetric flow of fuel that is restricted by the throttle valve is smaller than the volumetric flow fed by the fuel pump". There is no teaching or suggestion in the cited art of the claimed volumetric relationship of a valve and fuel pump. When the claimed baffle of the feeding unit begins to run empty, the claimed volumetric relationship enables interruption of the feeding of fuel by the fuel pump first, even though fuel will be present in the second chamber. The second chamber empties into the first chamber of the baffle very slowly because of the throttle valve. Consequently, the fuel pump will only be able to feed fuel after expiration of a fixed time-period after the baffle is initially emptied (i.e., after the volume of fuel in the second chamber has flowed through the throttle valve and into the first chamber).

The Examiner (at pgs. 2-3 of the Office Action) asserts that:

Gabauer teaches ... a bottom valve (45) arranged proximate the bottom of the first chamber (34, 46, 47), the bottom valve permitting a flow of fuel into the first chamber (34, 46, 47) and a second chamber, as defined by element 17, 20, and 21, connected

to the first chamber via a throttle valve 52 *wherein a volumetric flow of fuel that is restricted by the throttle valve 52 is smaller than the volumetric flow fed by the fuel pump 24....* (Emphasis Added)

Applicants disagree, however, that the cited art teaches or suggests the expressly recited subject matter of independent claim 1 because *Gabauer* fails to teach or suggest a volumetric relationship between any valve and the fuel pump. *Gabauer* discloses “an apparatus for pumping fuel from a tank to an internal combustion engine of a motor vehicle with a full impoundment container” (see paragraph [0005]). *Gabauer* (paragraph [0007], lines 1-3) describes “[a] pumping assembly 24, by which fuel is pumped to the engine 12, is disposed in the impoundment container 14. The pumping assembly 24 has an electric drive motor 26 and a pumping part 28, which are disposed in a common housing”.

Gabauer (paragraph [0009], lines 5-6) teaches that an opening 50 in the bottom of an impoundment chamber is controlled by a check valve 52, which opens into the suction chamber 34. *Gabauer* (paragraph [0011], lines 27-30) explains that “[t]he fuel pumped into the impoundment container 14 flows through the filter 70 before it reaches the suction chamber 34, so that the pumping assembly 24 in the suction chamber 34 aspirates only cleaned fuel”.

Gabauer (paragraph [0012], lines 12-18) additionally explains that “[w]hen the pumping assembly 24 is operated, it generates an underpressure in the suction chamber 34, as a result of which the caplike region 54 of the valve member 53 of the check valve 52 is lifted from the bottom 18 of the impoundment container 14, so that the opening 50 is uncovered, and fuel is aspirated from the space 17 and thus the tank 10 by the pumping assembly 24”. *Gabauer* (paragraph [0012], lines 23-26) further explains that “[t]he check valve 52 remains open until such time as the fill level in the impoundment container 14 is high enough to open the float valve 42 by lifting its float body 44, so that the valve member 45 uncovers the opening 40”. *Gabauer*

(paragraph [0013], lines 5-9) also states “[t]he disposition of the bottom 18 of the impoundment container 14 and of the check valve 52 is preferably such that a fill level of only about 8 mm in the tank already suffices to enable aspirating fuel into the suction chamber 34”.

Gabauer thus teaches, based on the structural part 45, a valve member which is driven by a float 44 independently from the filling level of fuel in the chamber 46. An opening 40 will either be opened or closed by this valve member. However, throttling of the volumetric flow with the valve member 45 is not possible in the *Gabauer* structure. Moreover, the opening 48 of the *Gabauer* is always open, as long as there is fuel in the chamber 46. Fig. 2 of *Gabauer* illustrates the function of the valve 45 that closes when the chamber 48 is empty so that the fuel flowing through the valve 52 will run into the fuel pump first, as opposed to the chamber 46. Consequently, *Gabauer* teaches that the valve 45 is not a throttle.

Gabauer teaches nothing whatsoever about the volumetric relationship of the valve 52 or the valve 45 to the fuel pump 24. Accordingly, *Gabauer* fails to teach or suggest the limitation “a volumetric flow of fuel that is restricted by the throttle valve is smaller than the volumetric flow fed by the fuel pump” recited in independent claim 1.

Furthermore, the Examiner considers that the structure designated by reference numerals 34, 46 constitutes the claimed first chamber. When construed in this manner, the valve 45 does not constitute the bottom valve recited in independent claim 1 because valve 45 is between the two section 34, 46. Thus, chamber 34 of *Gabauer* can not be considered to be the claimed “first chamber” and valve 45 of *Gebauer* can not be considered to be the claimed “bottom valve”.

For all the above reasons, *Gabauer* thus fails to anticipate the independent claim 1 due to failure to disclose, teach or suggest the claimed throttle valve.

Flambert also fails to teach or suggest the claimed throttle valve. *Flambert* discloses a reserve tank comprising at least two chambers (2, 4) linked by connectors (20, 22) which form a non-rigid coupling, e.g., an articulated joint (see Abstract). *Flambert* teaches that the device also includes a non-return valve 55, schematically illustrated in figures 1, 10 and 11, and associated conduit 54 at the same level of mouth 50 that is located at the bottom of the main bowl 2. *Flambert* (paragraph [0047]; Fig. 1) teaches that the valve 55 is arranged so that the main bowl 2 can be supplied with fuel, starting from the auxiliary bowl 4 through conduit 54 (not shown in Fig. 1), as indicated by arrows 56, 57 in figure 1, but fuel is not provided by the valve 55 to the auxiliary bowl 4 in the opposite direction¹.

Flambert thus clearly teaches a non-return valve, and precisely shows the operational flow of the non-return valve 55 in Fig. 18. With reference to Fig. 18, if the tank 2, 4 is empty, non-return valve 55 will then close the connection between the main bowl 2 and the auxiliary bowl 4 and, thereby, enable precise filling of the bowl 2 from which a pump is drawing fuel, where excess fuel may flow from bowl 2 into bowl 4. With reference to both *Gabauer* and *Flambert*, it is simply improper to consider the structural part 45 of *Gabauer* and the structural part 55 of *Flambert* are identical to applicants' claimed throttle valve.

Based on the teachings of *Gabauer* and *Flambert*, it is impossible to achieve a device in which it would be possible to first interrupt the feeding of the fuel pump and to then provide the fuel a short time later while the fuel pump draws fuel from the other chamber that is emptying of fuel. Unlike *Gabauer* and *Flambert*, the claimed invention is advantageously configured to achieve such result.

In view of the foregoing, amended independent claim 1 is patentable over *Gabauer* and

¹ See machine generated English translation of EP 0 922 603 provided by the Examiner with the March 13, 2009 Office Action.

Flambert. Reconsideration and withdrawal of all the rejections under 35 U.S.C. §102(b) and §103(a) are therefore in order, and a notice to that effect is respectfully requested.

In view of the patentability of independent claim 1, dependent claims 2-9 are also patentable over the prior art for the reasons set forth above, as well as for the additional recitations contained therein.

Based on the foregoing amendments and remarks, this application is in condition for allowance. Early passage of this case to issue is respectfully requested.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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